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October 12, 2021

**VIA ECF**The Honorable Andrew L. Carter Jr.  
United States District Judge  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, NY 10007Re: *Ferguson, et al. v. Ruane Cuniff & Goldfarb Inc., et al.*, No. 1:17-cv-06685

Dear Judge Carter:

We represent the DST Defendants in this action.<sup>1</sup> Pursuant to Your Honor's Individual Practices, we write to request permission to file the Declaration of Jeffrey J. Recher and certain exhibits related to the DST Defendants' Memorandum of Law in Response to the Arbitration Claimants' Opposition to the DST Defendants' Motion for a Preliminary Injunction (the "Response") under seal.

<sup>1</sup> The "DST Defendants" are DST Systems, Inc., the Advisory Committee of the DST Systems, Inc. 401(k) Profit Sharing Plan, and the Compensation Committee of the Board of Directors of DST.

The Honorable Andrew L. Carter Jr.

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Certain exhibits we intend to submit in support of the Response contain information related to arbitrations in which the DST Defendants are a party. Those materials include:

- Emails from counsel for the arbitration claimants (“Arbitration Counsel”) to various arbitrators, (Recher Decl. Ex. A & Ex. C);
- Emails from Arbitration Counsel to Amie Chale, (Recher Decl. Ex. B & Ex. D); and
- An email from the AAA to counsel of record in the arbitrations, (Recher Decl. Ex. E).

One of the arbitration agreements entered into by the parties provides that “[t]he arbitration and hearing shall be confidential, but only to the extent allowed under applicable law.” Out of an abundance of caution, the DST Defendants request that the foregoing materials be filed under seal in order to protect the confidentiality interests of the arbitration claimants, if any, in the contents of the arbitration-related materials.

While a presumption of public access applies to judicial documents, namely, documents relevant to the performance of the judicial function and useful in the judicial process, the weight of the presumption is “governed by the role of the material at issue” and the resulting value of such information to the public. *See Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119 (2d Cir. 2006); *United States v. Amodeo*, 44 F.3d 141, 145 (2d Cir. 1995). Courts also must balance against the weight of the presumption any countervailing factors, such as “the privacy interests of those resisting disclosure”—including “the degree to which the subject matter is traditionally considered private rather than public”—and the “nature and degree of injury” resulting from disclosure. *See Lugosch*, 435 F.3d at 120; *United States v. Amodeo*, 71 F.3d 1044, 1050–51 (2d Cir. 1995).

Respectfully submitted,

/s/ Lewis R. Clayton

Lewis R. Clayton

cc: All Counsel of Record (by ECF Filing)